

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1477 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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RAJUBHAI VITHALBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR HD VASAVADA for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
SERVED BY DS for Respondent No. 2
MR RC JANI for Respondent No. 4
MR MG NAGARKAR for Respondent No. 7, 8, 9,10

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 22/12/97

ORAL JUDGEMENT (Per Patel, J.)

1. The applicant has moved this Court under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus directing the respondent

authorities to trace out his wife, Ramila, and two minor children Neha and Nikita, who are said to be in the custody of respondent No. 5 to 10 or in the custody of the agents, relatives, friends and servants of the said respondents.

2. As per the averments made in the petition, the petitioner was living with his family members. The respondent No. 5, Mahendra Ramdhan Parikh was having family relations with the inlaws of the petitioner and was residing in the neighbourhood and due to the relationship with the said Mahendra, Sanjay respondent No.6, Pradip Radheshyam Agrawal, respondent No.7, residing in the neighbouring area, and Pavan Ramdhan Parikh respondent No. 8 became close friends. It is further stated that the respondent No.8 is elder brother of respondent No.1. (This averment is totally false because No.1 is State of Gujarat). It is further alleged that Pravin Jain, respondent No.9 is also a close friend of respondent No. 1. (This averment is also not correct for the aforesaid reasons). It is further averred that respondent No.10, though a police officer, is a very close friend of respondent No.1. (This is also not correct as respondent No.1 is State). It is averred in the petition that respondents No. 5 to 10 have acted in connivance and against the petitioner and committed certain offences by abducting and kidnapping wife of the petitioner and two minor daughters. It appears that on 2.7.97, the petitioner also addressed a letter to the Police Inspector of Shahibaugh Police Station pointing out that on 10.6.97 at about 4.00 pm. his wife left with two minor daughters for reaching the house of Girishkumar Chunilal Shah (who happens to be her brother) for spending four/five days in the house of Girishkumar. It is further alleged that from the house of Girishkumar, she left with two minor daughters for reaching her friend's house. However till the date on which the application came to be submitted, i.e. 2.7.97, the petitioner's wife and daughters did not return. It appears that the respondents have filed their replies.

3. Before filing this petition, from the contents of the petition, it appears that the petitioner has filed a complaint with regard to act/omission alleged against some of the respondents in the Court of Metropolitan Magistrate, Ahmedabad, which has been forwarded to police to investigate u/s. 156 of Criminal Procedure Code. The applicant has not placed on record the copy of such complaint or the details and stage of the proceedings.

4. It is pointed out that necessary actions have

been taken by the police department. From the affidavit of the Inspector of Police, it appears that one Pradeep Radheshyam informed that petitioner's wife and two daughters left India with Mahendra for Nairobi, for better education and prosperous future. It is also pointed out that the petitioner was aware about the relations between said Mahendra and his wife and the said person was repeatedly visiting the house of the petitioner. Mahendra has given tuition to two daughters of the petitioner. This information has been collected by the police officer during the inquiry. It is also the case of the petitioner. It is alleged by the petitioner that wife of the petitioner took away a sum of Rs.10,000/- in cash and ornaments worth Rs.1,25,000/from the house of the petitioner.

5. It is pointed out that the wife of the petitioner obtained a Passport on 10.2.97. Police inquiry also reveals that one Pravin Mirchand Jain, friend of the petitioner, was informed by the petitioner himself that in the month of June 1997, his wife Ramila got the passport for visiting Africa. Investigating Officer also obtained a zerox copy of a statement dated 20.1.1997 recorded by police before issuance of passport, wherein, wife of the petitioner stated that she has applied for a passport to visit Africa. Thus, it appears that she had a strong desire to go to Africa where she has gone. Not only that, but it appears that the Police Sub-Inspector was conveyed information by Police Officer of Air Port Branch, Mumbai that wife of the petitioner and two minor daughters as well as Mahendra left India, and zerox copy of their embarkation cards were also forwarded to the local police by Mumbai Police. It appears that on 11.6.97, by Flight No. GF.067, they left India. The Inspector of Police of Shahibaugh Police Station has filed this affidavit after making inquiries, and there is no reason to disbelieve the same.

6. Thus, much before leaving India, Passport was obtained by wife of the petitioner for herself and for her minor daughters. The respondent No.7 has produced before us an affidavit sworn by Ramila, wife of the petitioner, before a Notary Public at Nairobi, Kenya. The same is ordered to be taken on record. The affidavit discloses that she was ill-treated by the petitioner-husband and she had left the house of the petitioner with her two children and has gone to Nairobi with Mahendra voluntarily without anybody's pressure. It is clearly stated that neither she nor her children is/are kidnapped and that has not married with Mahendra. The investigation reveals that she left India voluntarily

with her children. The fact that she has obtained Passport much earlier clearly indicates her desire to leave India.

7. Investigation is pending, and, therefore, observations made herein shall not be taken into consideration while deciding the proceedings, and police shall investigate in accordance with law and shall file report in view of the investigation, and it will be open for the court to decide the proceedings without being influence by the order passed by this Court.

8. In the result, this application stands rejected.

Notice is discharged.

csm./ -----